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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

REPORT OF EXAMINATION
Change of: Place of Use and Purpose of Use
WRTS File # CS2-00318C

PRIORITY DATE	CLAIM NO.	PERMIT NO.	CERTIFICATE NO.
October 3, 1971			S2-00318(A)C

NAME		
Steve Rust		
ADDRESS/STREET	CITY/STATE	ZIP CODE
P.O. Box 552	Randle, WA	98377-0552

PUBLIC WATERS TO BE APPROPRIATED

SOURCE		
Unnamed Stream		
TRIBUTARY OF (IF SURFACE WATERS)		
Cowlitz River		
MAXIMUM CUBIC FEET PER SECOND (cfs)	MAXIMUM GALLONS PER MINUTE (gpm)	MAXIMUM ACRE FEET PER YEAR (ac-ft/yr)
0.06 cfs		10

QUANTITY, TYPE OF USE, PERIOD OF USE
.06 cfs for domestic supply, irrigation of 8 acres from April 1 to October 1 each year, and non-consumptive power generation as needed.

LOCATION OF DIVERSION/WITHDRAWAL

APPROXIMATE LOCATION OF DIVERSION—WITHDRAWAL
Point of Diversion is 1200 feet North and 325 feet West of the E ½ corner of Section 1.

SOURCE	PARCEL	LATITUDE	LONGITUDE	QTR/QTR	SECTION	TOWNSHIP	RANGE
Government Lot 8	032022003001			SE ¼ NE ¼	2	12 N	8 EWM

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED
[Attachment 1 shows location of the authorized place of use and point(s) of diversion or withdrawal]

That portion of the Homestead Entry Survey #256, located in Sections 1 and 2, Township 12 North, Range 8 E.W.M., described as follows: Beginning at corner #5 of said survey, which is 10 chains North 0 41' East of the West Quarter Corner of said section, said point being the True Point of Beginning: thence North 0 01' West 10 chains to corner #6, thence North 89 11' East 10 chains; thence South parallel with the west line of that certain parcel of land sold to Michael Hicks et ux, under Auditor's file number 856479, 10.01 chains; thence west to the True Point of Beginning. Parcel number 032020008000.

DESCRIPTION OF PROPOSED WORKS

A 2 inch water line diverts water from the unnamed stream to the house an small Pelton wheel (3-5 gallons per minute) and 12 volt generator attached to battery banks.

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE	COMPLETE PROJECT BY THIS DATE	WATER PUT TO FULL USE BY THIS DATE
Begun	Completed	Completed

PROVISIONS

All conditions and requirements contained in reports of examination or permits previously issued apply to this certificate unless specifically noted below.

Diversion intake shall be tightly screened at all times with wire mesh having openings with dimensions not greater than .125 (1/8th) inch each.

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The division of Certificate S2-00318C into Superseding Certificate S2-00318(A)C and S2-00318(B)C shall not be construed as validation as to the extent of Certificate S2-00318C as originally authorized. The amounts provided on the superseding portions of said water right reflect agreement among the owners of the described place of use, but are not confirmed by Ecology in this recording of the division of said right. The actual amounts authorized by the superseding certificates are subject to the historic beneficial use of Certificate S2-00318C.

FINDINGS OF FACT AND ORDER

Upon reviewing the investigator’s report, I find all facts relevant and material to the subject application have been thoroughly investigated. Furthermore, I find the change of water right as recommended will not be detrimental to existing rights.

Therefore, I ORDER approval of the recommended change of the place of use to Mr. Rust’s property and purpose of use to add non-consumptive power generation under Change Application No. S2-00318(A)C, subject to existing rights and the provisions listed above.

You have a right to appeal this ORDER. To appeal this you must:

- File your appeal with the Pollution Control Hearings Board within 30 days of the “date of receipt” of this document. Filing means actual receipt by the Board during regular office hours
- Serve your appeal on the Department of Ecology within 30 days of the “date of receipt” of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). “Date of receipt” is defined at RCW 43.21B.001(2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your Notice of Appeal.
- Serve and file your appeal in paper form; electronic copies are not accepted.

1. To file your appeal with the Pollution Control Hearings Board

Mail appeal to:		Deliver your appeal in person to:
The Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903	OR	The Pollution Control Hearings Board 4224 – 6th Ave SE Rowe Six, Bldg 2 Lacey, WA 98503

2. To serve your appeal on the Department of Ecology

Mail appeal to:		Deliver your appeal in person to:
The Department of Ecology Appeals and Application for Relief Coordinator PO Box 47608 Olympia, WA 98504-7608	OR	The Department of Ecology Appeals and Application for Relief Coordinator 300 Desmond Dr SE Lacey, WA 98503

3. And send a copy of your appeal to:

Tom Loranger
Department of Ecology
Southwest Regional Office
P.O. Box 47775
Olympia, WA 98504-7775

For additional information visit the Environmental Hearings Office Website: <http://www.eho.wa.gov> . To find laws and agency rules visit the Washington State Legislature Website: <http://www1.leg.wa.gov/CodeReviser> .

Signed at Olympia, Washington, this day of March 2009.

Tom Loranger, Section Manager
Water Resources Program
Southwest Regional Office

BACKGROUND

Description and Purpose of Proposed Change

Mr. Rust filed an application to change the place of use to his property and add non-consumptive power generation to the existing Certificate #S2-00318C. This change request is being simultaneously processed with the request to do an administrative division of the water right to split the Certificate between Mr. Rust and his neighbor, Mr. Buchanan. As a result of the split and this decision, Mr. Rust will receive Superseding Certificate #S2-00318(A)C and Mr. Buchanan will receive Superseding Certificate S2-00318(B)C.

Attributes of the Certificate and Proposed Change

Table 1 Summary of Proposed Changes and Administrative Division of Water Right #S2-00318C (Superseding Certificate #S2-00318(A)C)

Attributes	Existing	Proposed
Name	R.J. Clubine and Dan H. Dye	Steve Rust
Priority Date Date of Application for Change	October 3, 1971	Change request received 2/3/04 Administrative Division request received 8/6/07
Instantaneous Quantity	.12 cfs	.06 cfs
Annual Quantity	22 acre feet per year	10 acre feet per year
Source	Unnamed stream	Unnamed stream
Point of Diversion/Withdrawal	2200’N and 325’ W of the E ¼ corner of Section 2, T. 12 N. 8 E.W. M.	2200’N and 325’ W of the E ¼ corner of Section 2, T. 12 N. 8 E.W. M.
Purpose of Use	Domestic Supply, Irrigation of 10 acres from April 1 to October 1 each year	Domestic Supply, Irrigation of 8 acres from April 1 to October 1 each year, and non-consumptive power generation as needed
Period of Use	Domestic Supply year round, irrigation is from April 1 to October each year	Domestic supply is year round, irrigation is from April 1 to October 1 each year, and power generation is as needed
Place of Use	SW ¼ NW ¼ of Section 1, T 12 N. 8 E. W. M. Lewis County	SW ¼ NW ¼ of Section 1, T. 12 N., 8 E.W.M. Lewis County; Parcel number 032020008000

Legal Requirements for Proposed Change

The following is a list of requirements that must be met prior to authorizing the proposed change in of place of use and purpose of use.

- Public Notice

Notice of the Application was published on February 25, 2004 and March 3, 2004 in the East County Journal. No comments or protests were received.

- **State Environmental Policy Act (SEPA)**

A water right application is subject to a SEPA threshold determination (i.e., an evaluation whether there are likely to be significant adverse environmental impacts) if any one of the following conditions are met.

- It is a surface water right application for more than 1 cubic feet per second. If the project is for agricultural irrigation, the threshold is increased to 50 cubic feet per second, so long as the project will not receive public subsidies;
- It is a groundwater right application for more than 2,250 gallons per minute;
- It is an application combined with other water right applications for the same project, exceeds the amounts above;
- It is a part of a larger proposal that is subject to SEPA for other reasons (e.g., the need to obtain other permits that are not exempt from SEPA);
- It is part of a series of exempt actions that, considered together, trigger the need to do a threshold determination, as defined under WAC 197-11-305.

Because this application does not meet any of these conditions, it is categorically exempt from SEPA and a threshold determination is not required.

Water Resources Statutes and Case Law

RCW 90.03.380(1) states that a water right that has been put to beneficial use may be changed. The point of diversion, place of use, and purpose of use may be changed if it would not result in harm or injury to other water rights.

RCW 90.03.380(1) states that a purpose of use may be added to a water right if the annual consumptive quantity is not increased.

INVESTIGATION

History of Water Use

R.J. Clubine and Dan H. Dye were granted a Certificate of Water Right, CS2-00318 with a priority date of October 3, 1971 for .12 cfs, 22 acre feet per year of water from an unnamed stream which is tributary to the Cowlitz River for domestic supply and irrigation of 10 acres from April 1 to October 1 each year. Mr. Rust and David Buchanan, Mr. Rust's next door neighbor, have requested an administrative division of the water right certificate. This administrative division is being processed at the same time as the change request. Each party will get a superseding certificate. In the course of the Department's communications with Mr. Rust, it became apparent the Mr. Rust was also using the water for power purposes. He was directed to final a water right change application to add the purpose of power. This report reviews that application.

Proposed Use

Mr. Rust proposes to add non-consumptive power generation and change the place of use to the property he currently owns which is parcel number 032020008000. He has been using power on this property for about 28 years.

Other Rights Appurtenant to the Place of Use

Mr. Rust and Mr. Buchanan have requested that the water right certificate under CS2-00318 be administratively divided. Mr. Rust will receive a Superseding Certificate, #S2-00318(A)C, for domestic supply, irrigation of 8 acres from April 1 to October 1 each year and non- consumptive power generation as needed. Mr. Buchanan will receive a Superseding Certificate, #S2-00318(B)C, in the amount of .06 cfs, 12 acre feet per year for domestic supply and irrigation of 2 acres from April 1 to October 1 each year. There are no other water rights on this stream.

Hydrologic/Hydrogeologic Evaluation

This is a non-consumptive use so there will be no net loss of water from the stream flow as a whole except in the reach between the point of diversion and the place where the water for power generation is returned to the stream which is about 800 feet of stream.

Impairment Considerations

This power generation is a non-consumptive use so will have not have an effect on downstream rights since all water is returned to the stream.

Public Interest Considerations

The application was reviewed by Steve Boessow with the State Department of Fish and Wildlife. Mr. Boessow requested that the diversion intake be screened at all times according to the WDFW standards to prevent fish from getting into the intake. No fish are known to inhabit this small, high gradient stream.

CONCLUSIONS

The change in purpose of use to add non-consumptive power generation and in place of use to include Mr. Rust’s property will not impair existing rights or other environmental considerations. In this case, Mr. Rust added a small, 12-volt micro-hydroelectric unit to his water system line 28 years ago. It requires 3-5 gallons of water per minute to charge a battery and is used predominantly in the winter time when sunlight is not sufficient for Mr. Rust to use his solar system. Because the water use to spin the Pelton wheel is non-consumptive and the water is discharged back to the unnamed stream, the addition of power as a purpose of use to this right will not conflict with the limitations of RCW 90.03.380(1).

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that the request for change to add non-consumptive power generation and to change the place of use to Mr. Rust’s current property be approved and that Mr. Rust’s Superseding Certificate be issued in the amounts and within the limitations listed below and subject to the provisions beginning on Page 2, et seq.

Purpose of Use and Authorized Quantities

The amount of water recommended is a maximum limit and the water user may only use that amount of water within the specified limit that is reasonable and beneficial:

- .06 cubic feet per second
- 10 acre-feet per year
- Domestic supply, irrigation of 8 acres from April 1 to October 1 each year, and non-consumptive power generation as needed.

Point of [Diversion Withdrawal]

SE ¼, NE¼, Section 2, Township 12 North, Range 8 E.W.M.

Place of Use

That portion of the Homestead Entry Survey #256, located in Sections 1 and 2, Township 12 North, Range 8 E.W.M., described as follows: Beginning at corner #5 of said survey, which is 10 chains North 0 41’ East of the West Quarter Corner of said section, said point being the True Point of Beginning: thence North 0 01’ West 10 chains to corner #6, thence North 89 11’ East 10 chains; thence South parallel with the west line of that certain parcel of land sold to Michael Hicks et ux, under Auditor’s file number 856479, 10.01 chains; thence west to the True Point of Beginning. Parcel number 032020008000.

Report by: _____ Date _____
Marsha Beery
Water Resources Program

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